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SIPDIS

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INR/IAA (BEN-YEHUDA)

TREASURY FOR ALLEL RODRIGUEZ, GREGORY BERGER, WILLIAM

BALDRIDGE, LARRY MCDONALD

USDOC FOR 4322/ITA/MAN/WH/OLAC (SMITH, S.)

EB/IFD/OIA/JPROSELI

L/CID/JNICOL

E.O. 12958: N/A

TAGS: [CASC](#) [EFIN](#) [EINV](#) [KIDE](#) [HA](#) [OPIC](#) [POGV](#)

SUBJECT: HAITI: 2005 REPORT ON INVESTMENT DISPUTES AND EXPROPRIATION CLAIMS

REF: STATE 70014

The Embassy is aware of ten (10) investment disputes against private citizens and expropriation claims against the Government of Haiti by U.S. citizens. In addition to these cases, the Embassy has provided assistance to a number of other U.S. citizens that have investment disputes with private persons or entities in Haiti. In all cases, especially those involving occupation of land by squatters, satisfactory resolution has been hindered by problems in Haiti's legal system and compounded by the political crisis of 2004, which resulted in the formation of the Interim Government of Haiti (IGOH). The IGOH, supported by the international community, has worked to establish a credible, effective judiciary and police force. However, progress has been minimal, especially with respect to civil/commercial cases. Many claimants opt to settle their disputes out of court rather than rely on the justice system, which has traditionally been marred by incompetence, corruption, and a lack of resources.

11. (A) Claimant A

(B) 1973

(C) According to information provided by Claimant A (a U.S. citizen who has not signed a Privacy Act Waiver), in 1970 Claimant signed a 99 year agreement with the GOH to establish a privately financed, privately administered free enterprise zone on the Haitian island of Tortuga. Under the agreement, the GOH would halve the profits of the zone but full management authority would rest with the Free Port Authority, under the control of Claimant A.

Prospective investors would obtain all necessary permits and other administrative needs from the Free Port Authority, not the GOH. The contract waived the jurisdiction of Haitian courts over the project. Under pressure from the GOH, the agreement was renegotiated in 1972 but remained substantively the same. By 1973, Claimant A claims to have invested approximately \$2.5 million in the project.

Claimant A reports that in February 1973 the GOH effectively seized Claimant's investment and nullified the contract, asserting the jurisdiction of Haitian courts despite the provisions in the contract. Claimant A asserts that the GOH legitimized the contract nullification through illegitimate proceedings in the Haitian courts. Claimant A further alleges that attempts to resolve the claim were frustrated by many short-lived and illegitimate governments in Haiti.

The U.S. Embassy has intervened on several occasions with the GOH on Claimant A's behalf, urging that the case be resolved promptly and equitably. In March 1997, the U.S. Ambassador wrote President Preval, asking him to meet with Claimant A's attorney to discuss a plan for an out-of-court settlement. In December 1997, Claimant A met with representatives of President Preval in an effort to revitalize discussions regarding the future of the project. The U.S. Embassy further called the matter to the attention of President Preval in an invitation to meet with Claimant A. The GOH agreed to send a delegation, including the State Secretary for Tourism and two members of the President's personal staff, to Texas to meet with Claimant A in June 1998.

Most recently, in June 2002, Claimant again contacted the Embassy for assistance in re-opening negotiations with the Government of Haiti. The Embassy contacted Martine Deverson, then Minister of Tourism, regarding the status of Claimant A's request for negotiations. She informed the Embassy that the Haitian court had indeed revoked the claimant's concession. She assured the Embassy that the Ministry of Justice was prepared to reconsider any proof Claimant A has of justification for a decision to the contrary, including original supporting documents or a new proposal for review. In 2005, the Embassy attempted, but was unable, to contact

Claimant A.

12. (A) Claimant B

(B) 1996

(C) Property belonging to Claimant B's family (U.S. citizens, who have not signed Privacy Act Waivers) in the Delmas area of Port-au Prince, was invaded by persons who cleared the land and began constructing homes on it. The squatters acted with overt encouragement from the Deputy Mayor of Delmas, who made public statements to the effect that the Municipality was expropriating the land. Claimant B's family secured court orders affirming their clear title to the land and sought GOH enforcement of the orders. In 1998, the Ambassador sought the intervention of the Ministries of the Interior and Justice, wrote the Mayor of Delmas regarding the matter, and raised the matter with President Preval. Pursuant to court order, the Haitian National Police cleared the land of squatters on two occasions, but the matter is not yet resolved. In 2005, Claimant B told the Embassy that the last change in the case occurred in 2002, when Claimant B attempted to retake possession of the disputed property, but was shot at and chased away by the squatters.

13. (A) Claimant C

(B) 1996

(C) Claimant C is an American-held company (that has not signed a Privacy Act Waiver) with a copper mining concession in the Artibonite region of Haiti, near the northern city of Gonaives. Since 1985, the U.S. company has invested USD 9 million in the operation. In 1996, local Haitian government authorities challenged Claimant C's right to the concession, and the property was seized and held from September 1996 until the spring of 1998. The company successfully defended its claim in district court of Gonaives and again in appeals court in Gonaives when the government appealed the ruling in favor of the company.

Claimant C regained control of the disputed mining property subsequent to the appeals court decision. The case was appealed by the government to the Supreme Court, which ruled in favor of Claimant C in 1998. The Embassy considers the case closed.

14. (A) Claimant D

(B) 1983

(C) Claimant D (a U.S. citizen who has not signed a Privacy Act Waiver) alleges that land purchased by his company in Grand Godet in the south of Haiti in 1972 was illegally confiscated by the GOH in 1983. Jean Marie Chanoine, a member of Jean Claude Duvalier's cabinet, allegedly gave the order to confiscate the property. The Administration General des Contributions occupied the land and then sold it to Chanoine. Claimant D's attorney obtained a favorable court judgment in 1990, but Claimant D has not been able to retake possession of the property. Claimant D is currently seeking additional judicial intervention. The Embassy has repeatedly raised the issue with GOH officials, most recently in a letter to President Preval in 1998. However, since then, the claimant has not sought further assistance, and the Embassy has attempted, but been unable, to contact Claimant D.

15. (A) Claimant E

(B) 1988

(C) Claimant E's (a U.S. Citizen who has not signed a Privacy Act Waiver) father purchased property in 1978, which was originally part of the estate of former President Paul Magloire. After Magloire left office in 1957, the land was nationalized by executive order. The Magloire family disputes the original seizure and purchase of the land and filed suit against both Claimant E and the GOH to reclaim the land. Haiti's Supreme Court ruled for the Magloires and ordered the eviction of Claimant E. The court subsequently ordered a stay of the eviction. The matter now rests in the political realm; Claimant E is seeking to have the GOH reconfirm the original sale. The U.S. Ambassador called this matter to the attention of President Preval in a January 1998 letter. As of 2005, this case has not been settled and Claimant E is still attempting to have the original sale recognized. However, Claimant E is living on the property purchased in the sale.

16. (A) Claimant F

(B) 1996

(C) Claimant F (a U.S. citizen who has not signed a privacy act waiver) owns a building in the Delmas section of Port au Prince that has been used as a GOH public secondary school for the past four years. Despite a court judgment against the mayor of Delmas in 1996 and a promise from the Ministry of Education to vacate the property, classes in the building continued. The Embassy wrote to the Ministry of Education in May 1999 to ask that the school vacate the property at the end of the current term. According to Claimant F's lawyer, who the Embassy contacted in 2005, Claimant F and the GOH reached an agreement and the GOH has signed a contract to rent Claimant F's property thereby settling the dispute. The Embassy considers this case closed.

17. (A) Claimant G

(B) 2000

(C) Claimant G, a U.S. company operated in Haiti by two U.S. citizens (who have not signed Privacy Act Waivers), is involved in court cases pending in both Texas and Haitian courts against another Texas-based U.S. company, over ownership of Claimant G's assets. In February 2000, the GOH imposed a large fine on Claimant G for customs violations and temporarily shut down Claimant G's operations. Claimant G protested this move as an expropriation. Claimant G and the GOH settled on a fine and payment schedule shortly thereafter, and Claimant G's business reopened.

When Claimant G ceased making the agreed upon payments in June 2000, the GOH moved to take all proceeds from sales at the company, effectively taking control of the company's operations. Embassy officers met frequently with GOH officials to urge them to give Claimant G all due consideration under Haitian and international law, and to ensure the safety of the U.S. citizens affiliated with Claimant G. However, due to the ongoing U.S. and Haitian court cases, the USG has not taken a position on the merits of either Claimant G or the other U.S. company's claims.

On October 6 2004, Claimant G was found guilty of violating the Foreign Corrupt Practices Act by authorizing the payment of over USD 500,000 to Haitian customs officials in 1998 and 1999 to avoid more than USD 1.5 million in customs duties. According to Claimant G's lawyer, who the Embassy contacted in 2005, Claimant G's conviction in the United States effectively ended the Claimant G's dispute in Haiti. The Embassy considers the case closed.

18. (A) Claimant H

(B) 2002

(C) In 1956, Claimant H's (a U.S. citizen who has not signed a Privacy Act Waiver) father began to build an experimental farm and ecological reserve on land he bought from several smallholders in Kenskoff, west of Port-au-Prince. On approximately 30 acres, the reserve protects plant species indigenous to Haiti, Central and South America, Asia and Africa. After his death in 1992, his daughter, Claimant H, continued to use the Farm for ecological and agricultural education.

Between 1998 and 2002, Claimant H's family experienced increasing difficulties with neighbors including theft and poaching, and police protection has been inadequate. A well-organized, well-funded group with alleged ties to several government officials built a large road through Claimant H's property and prepared to build buildings, all without approval from Claimant H. The group also advertised pieces of the land for sale to the public.

Claimant H obtained a court order to stop construction while the land ownership issue was settled, but the order was not enforced and construction continued. The claimant and Claimant H's family say that their lives were threatened and they were denied access to their property. Embassy officers met with various Haitian officials and Ministers to request a response to Claimant H's complaints and enforcement of the court order. Claimant H also appealed to members of the international community in Port-au-Prince, including NGO and international organization workers, to frequent the site and show an interest. Finally, Embassy officers approached the owner of the property neighboring the claimant's, and through whose property the access road had been cut (with the property owner's consent), and noted to the neighbor that he could be held liable on racketeering charges if he abetted the activities of the group seeking to seize claimant's land. The neighbor agreed to close access to the group, and construction activities ceased.

In 2005, Claimant H's lawyer informed the Embassy that the courts ruled in the claimant's favor. However, the paperwork to execute the decision has not yet been executed. Claimant H's lawyer expects that the dispute may continue until the results are part of the public record.

19. (A) Claimant I

(B) 2004

(C) Claimant I (a U.S. corporation that has not signed a Privacy Act Waiver) operates a cellular network in Haiti. Claimant J's contract dispute with the Interim Government of Haiti (IGOH) about its proposed upgrade to GSM technology began in mid-2004. Claimant J started negotiations with the IGOH from the position that their contact would require only a small amendment to accommodate an upgrade to GSM. The IGOH, on the other hand, argued that Claimant I would need to negotiate a new contract.

Throughout the dispute, the Embassy has advocated on behalf of Claimant I, arguing that the government should take a technology-neutral position. The Embassy has also encouraged both sides to negotiate in good faith and settle the matter as quickly as possible. On behalf of Claimant I, the Ambassador brought the Embassy's technology neutrality position to the attention of the Prime Minister, and the Economic Counselor discussed Claimant I's situation with the Minister of Transportation and Public Works on several occasions. Both the IGOH and Claimant I say they are close to signing a renegotiated contract, which is a compromise between their original positions. The Embassy will continue to monitor the negotiations, and push for a speedy and equitable resolution.

10. (A) Claimant J

(B) 2004

(C) Claimant J (a U.S. Citizen who has not signed a Privacy Act Waiver) asserts that in 2000, the SONAPI industrial park took possession of his machinery, worth approximately USD 6.5 million, because of rental debt variously described as USD 35,000 or 100,000. After the departure of President Aristide in February 2004, Claimant J attempted to get his equipment back, however he was told that it had been destroyed in the rioting that took place around the time of Aristide's departure. Claimant J says he knows this assertion is false. He claims that in October 2002, SONAPI sold his equipment to well connected businessmen and gave the profits to members of the Aristide government.

Since December 2004, Claimant J has asked for indemnification by the IGOH. His case was recently transferred from SONAPI to the Minister of Finance for a final decision. The Embassy has not taken a position on the details of the case, but has pushed the Ministry to provide Claimant J with a timely response. The Ambassador wrote a letter supporting the timely adjudication of Claimant J's case and the Economic Counselor met with the Minister of Finance several times to discuss Claimant J's case. In June 2005, the Interim Government of Haiti (IGOH) and Claimant J entered into negotiations to settle the dispute. The Embassy will continue to monitor Claimant J's case.

Claimant Names

Claimant A: Greg Peterson, Dupont Caribbean Development  
Claimant B: Roy Benjamin Family  
Claimant C: First City Development Corporation of Haiti S.A.  
Claimant D: Tomar Industries of Haiti  
Claimant E: Monnin Family  
Claimant F: Jules Moliere  
Claimant G: Rice Corporation of Haiti  
Claimant H: Jane Wynne and Family  
Claimant I: Comcel  
Claimant J: Antoine Medard, A&M Industries  
FOLEY